

<sup>1</sup> OWCP found that, while counsel questioned the selection of the impartial medical specialist, Dr. Ian Fries, a Board-certified orthopedic surgeon, there was no evidence of improper selection. Dr. Fries was an impartial specialist with regard to both arms. Counsel argues on appeal that Dr. Fries was not properly selected.

medical specialists will be selected on a strict rotating basis in order to negate any appearance that preferential treatment exists between a particular physician and OWCP.<sup>2</sup>

OWCP has an obligation to verify that it selected Dr. Fries in a fair and unbiased manner. It maintains records for this very purpose.<sup>3</sup> The record includes an unsigned OWCP referral form scanned into the record on October 31, 2008, which indicates that the referral source was the Physicians' Directory System "PDS" and the contact name was "Susan." It contains an annotation that Dr. Fries, a Board-certified orthopedic surgeon was selected and would examine appellant on January 7, 2009. The Board notes that this form indicates that the referral source was "PDS"; however, no other information is given pertaining to how Dr. Fries was selected. An ME023 form, appointment schedule notification, noted appellant's appointment with Dr. Fries but did not contain information documenting the selection process for Dr. Fries. There is no evidence documenting the selection process, such as screen shots or other documents, that would substantiate if Dr. Fries was properly selected through the referee selection process.

The Board has placed great importance on the appearance as well as the fact of impartiality, and only if the selection procedures which were designed to achieve this result are scrupulously followed may the selected physician carry the special weight accorded to an impartial specialist. OWCP has not met its affirmative obligation to establish that it properly followed its selection procedures.<sup>4</sup>

As the record lacks adequate documentation of the selection process in this case, the Board will remand the case to OWCP for selection of another impartial medical specialist. After such further development as necessary, OWCP shall issue an appropriate merit decision.

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<sup>2</sup> *Raymond J. Brown*, 52 ECAB 192 (2001).

<sup>3</sup> *M.A.*, Docket No. 07-1344 (issued February 19, 2008).

<sup>4</sup> *H.W.*, Docket No. 10-404 (issued September 28, 2011).

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 10 and July 22, 2010 be set aside and the case remanded for further proceedings consistent with this opinion.

Issued: October 25, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board